

REMARKS

Claims 1-8 are pending.

Claims 1-8 are rejected under 35 U.S.C. §102(b) over Saito (JP-A-2002-352837). The rejection is respectfully traversed.

Saito fails to disclose a control section that controls a gas supply unit to supply each of the fuel gas and the oxidizing gas to an anode and a cathode of the fuel cell, respectively by quantity corresponding to a load of the load device; wherein the control section estimates a gas permeation quantity of at least one of the fuel gas and the oxidizing gas between the anode and the cathode after the power generation performed by the fuel cell is stopped; and wherein the control section corrects a supply quantity of at least one of the fuel gas and the oxidizing gas each corresponding to the load in accordance with the estimated gas permeation quantity, which is to be supplied by the gas supply unit upon a subsequent start of power generation as recited in claim 1.

In rejecting claim 1, the Office Action effectively admits that that Saito fails to disclose the above-quoted features. In order to cure this deficiency of Saito, the Office Action cites *In re Schreiber*, 128 F.3d 1473 (Fed. Cir. 1997), and alleges that the above-quoted features are mere functional limitations and recite only a manner of use. Applicant respectfully disagrees with this assertion for at least the following reasons.

In *Schreiber*, the Federal Circuit agreed that a conical container top for dispensing popped popcorn was anticipated by a conical spout used primarily to dispense oil from a can because the oil conical spout inherently performed the function recited in the Applicant's claims. *Schreiber* recited a dispensing top for dispensing popped popcorn in a specific manner in the preamble of the claim. The court held that this recitation was a mere intended use.

The holding in *Schreiber* indicates that, if a claim recites only an intended use of a

prior art device, the claim should be rejected as anticipated by the prior art device.

Claim 1 is distinguished from the claims in *Schreiber* because, claim 1 positively recites structure of "a control section that controls..." and affirmatively recites the structure of the control section in the body of the claim. That is, unlike *Schreiber*, which recited an intended use (popped popcorn dispenser) of a conical spout disclosed by the reference (oil conical spout), Applicant's claim 1 recites a structure that is not disclosed by Saito. The Office Action effectively admits that Saito fails to disclose this structure in both the rejection of claim 1, and in the Response to Arguments section. See Office Action page 3, lines 2-4 and page 4, lines 8-10 and line 20-page 5, line 2.

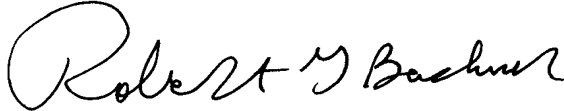
Further, the actual function of the control section is recited in the body of claim 1, not a mere intended use recited in the preamble. Claim 1 positively recites a control section that controls..., and how the control is carried out. That is, Applicant's claim more than a mere intended use of the structure of Saito. As acknowledged by the Office Action, Saito discloses a completely different controller than that recited in claim 1. For at least the forgoing reasons, Office Action misapplies *Schreiber* and the structure recited in the pending claims is not disclosed in Saito.

Thus, Saito could not reasonably be interpreted to disclose the combination of all of the features recited in claim 1. Accordingly, Saito also fails to disclose the features recited by claims 2-8 for at least the dependence of these claims on claim 1 and for the separately patentable features that these claims recite. Withdrawal of the rejection is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-8 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



James A. Oliff
Registration No. 27,075

Robert G. Bachner
Registration No. 60,122

JAO:RGB/amt

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OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

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